Adonis Apparel, Inc. *and* **Doris Hogge.** Case 14–CA–21284

January 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge filed by Doris Hogge on March 1, 1991, the General Counsel of the National Labor Relations Board issued a complaint on November 1, 1991, against Adonis Apparel, Inc, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On November 29, 1991, the General Counsel filed a Motion for Summary Judgment. On December 5, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that, on November 18, 1991,[1] counsel for the General Counsel informed the Respondent's counsel in a phone conversation that the Board's Rules and Regulations require an answer to be filed within 14 days of service of the complaint and that the Respondent's answer was past due. The Respondent's counsel replied that the Respondent was in bankruptcy and did not intend to file an answer. Counsel for the General Counsel told the Respondent's counsel that the Region would move for default summary judgment if the Respondent failed to file an answer. Later that day, counsel for the General Counsel sent a letter to the Respondent's counsel confirming this conversation. On November 25, counsel for the General Counsel received a letter from the Respondent's counsel, dated November 22, confirming receipt of the former's November 18 letter and advising that the Respondent was not yet in bankruptcy. The Respondent has not filed an answer to date.

Therefore, in the absence of good cause being shown for the Repondent's failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Illinois corporation, is engaged in the manufacture, nonretail sale, and distribution of ladies apparel, sportswear, and dresses with a facility in Albion, Illinois. During the 12-month period ending March 31, 1991, the Respondent, in the course and conduct of its business operations, sold and shipped from its Albion, Illinois facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Illinois. During the 12-month period ending March 31, 1991, the Respondent, in the course and conduct of its business operations, also sold and shipped from its Albion, Illinois facility products, goods, and materials valued in excess of $50,000 to other enterprises located within the State of Illinois, each of which other enterprises meets an other than solely indirect standard for the assertion of the Board's jurisdiction. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union, International Ladies' Garment Workers' Union, Local 314, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Section 8(a)(1) Violations*

In September 1990, the Respondent's president, Brittan Schnell, solicited assistance from an employee at the Albion facility in removing the Union and promised an employee benefits for the employee's assistance in removing the Union. In January, the Respondent's sewing supervisor, Ruth Cropper, also solicited assistance from an employee in removing the Union. About January 21, President

[1] All dates are in 1991 unless otherwise noted.

[2] Even assuming that the Respondent has filed a bankruptcy petition, it is well settled that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. Board proceedings fall within 11 U.S.C. § 362(b)(4) and (5), the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. *Phoenix Co.*, 274 NLRB 995 (1985).

Schnell interrogated an employee concerning her union activities and threatened an employee with discharge for engaging in union activities. About January 30, President Schnell advised an employee that she was receiving a warning letter because of another employee's union activities.

We find that by the acts and conduct described above the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and that the Respondent therefore has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

B. *Discrimination Against Hogge*

About January 30 and February 13, the Respondent issued written warnings to employee Doris Hogge. About February 19, the Respondent suspended and discharged Hogge. The Respondent engaged in these acts because Hogge joined, supported, or assisted the Union and engaged in concerted activities for collective-bargaining purposes or other mutual aid or protection, and in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We find that by the acts and conduct described above the Respondent has discriminated in regards to the hire or tenure or terms or conditions of employment of its employees, and that the Respondent therefore has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. By soliciting assistance from its employees in removing the Union, by promising an employee benefits for the employee's assistance in removing the Union, by interrogating an employee concerning her union activities, by threatening an employee with discharge for engaging in union activities, and by advising an employee that she was receiving a warning letter because of another employee's union activities, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By issuing written warnings to employee Hogge and by suspending and discharging Hogge, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to offer Doris Hogge immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of earnings or other benefits she may have suffered by reason of the unlawful suspension and discharge in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order the Respondent to remove from its files any reference to Hogge's unlawful warnings, suspension, and discharge and to notify Hogge that this has been done and that these unlawful actions will not be used against her in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Adonis Apparel, Inc., Albion, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Soliciting assistance from an employee in removing the Union.

(b) Promising an employee benefits for assisting in removing the Union.

(c) Interrogating an employee concerning her union activities.

(d) Threatening an employee with discharge for engaging in union activities.

(e) Advising an employee that she was receiving a warning letter because of another employee's union activities.

(f) Issuing warnings to employees, suspending, and discharging them because they engaged in union activities.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Doris Hogge immediate and full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and

make her whole for any loss of earnings and other benefits she may have suffered as a result of the discrimination against her, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to Hogge's unlawful warnings, suspension, and discharge and notify her in writing that this has been done and that these unlawful actions will not be used in any way against her.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Albion, Illinois, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT solicit assistance from our employees in removing the Union.

WE WILL NOT promise our employees benefits for their assistance in removing the Union.

WE WILL NOT interrogate out employees concerning their union activities.

WE WILL NOT threaten our employees with discharge for engaging in union activities.

WE WILL NOT advise our employees that they are receiving a warning letter because of another employee's union activities.

WE WILL NOT issue warnings to our employes, suspend, and discharge them because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer employee Doris Hogge immediate and full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and WE WILL make her whole for any loss of earnings and other benefits she may have suffered as a result of the discrimination against her, with interest.

WE WILL remove from our files any references to Hogge's unlawful warnings, suspension, and discharge and notify her in writing that this had been done and that these unlawful actions will not be used in any way against her.

ADONIS APPAREL, INC.